

1 J. Daniel Holsenback (California State Bar Number 145640)

2 **HOLSENBACK TAYLOR**

3 625 Broadway, Suite 906

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7 Attorney for Defendant TierraNet, Inc.

8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 White Cap Construction Supply, Inc.,)

11 Plaintiff,)

12 vs.)

13 The Domain Name *oceanographical.com*, in)
14 rem, TierraNet, Inc., Domain Name Registrar,)

15 Defendants.)
16)

CASE NO. 07CV2064WQH (CAB)

**DEFENDANT TIERRANET, INC.'S
ANSWER TO COMPLAINT**

17 Defendant TierraNet, Inc. Answers the Complaint filed by White Cap Construction Supply,
18 Inc. as follows:

19 **FIRST CLAIM FOR RELIEF**

20 **(ANTICYBERSQUATTING CONSUMER PROTECTION ACT – 15 U.S.C. § 1125(d))**

21 **A. JURISDICTION**

22 1. Admit.

23 2. Admit.

24 **B. THE PARTIES, PERSONAL JURISDICTION AND VENUE**

25 3. Answering Paragraph 3 of the Complaint, Defendant is without sufficient knowledge
26 or information to form a belief as to the truth of the allegations contained in said paragraph, and on
27 that basis denies each and every allegation contained therein.
28

1 4. Answering Paragraph 4 of the Complaint, Defendant is without sufficient knowledge
2 or information to form a belief as to the truth of the allegations contained in said paragraph, and on
3 that basis denies each and every allegation contained therein.

4 5. Denied in part and admitted in part. AW Registry, Inc. is currently the registrar of
5 the domain name at issue. Although there is a signed purchase agreement between TierraNet, Inc.
6 and AW Registry, Inc. to purchase this account, AW Registry, Inc. currently is the registrar of
7 whitecap.com. With regard to TierraNet, Inc.'s principal place of business, Defendants admits that
8 it is located at 14284 Danielson Street, Poway, CA 92064, in this judicial district.

9 6. Answering Paragraph 6 of the Complaint, Defendant admits that whitecap.com is
10 registered to oceanographical.com, which is allegedly located at 3453 Ingraham Street, Suite B, San
11 Diego, CA 92109. With regard to the remainder of Paragraph 6, Defendant is without sufficient
12 knowledge or information to form a belief as to the truth of the allegations, and on that basis denies
13 them.

14 7. Denied in part and admitted in part. AW Registry, Inc. is currently the registrar of
15 the domain at issue. Defendant admits that there is a purchase agreement between TeirraNet, Inc.
16 and AW Registry, to purchase this account.

17 8. Answering Paragraph 8 of the Complaint, Defendant is without sufficient knowledge
18 or information to form a belief as to the truth of the allegations contained in said paragraph, and on
19 that basis denies each and every allegation contained therein.

20 9. Admit.

21 10. Answering Paragraph 10 of the Complaint, Defendant is without sufficient
22 knowledge or information to form a belief as to the truth of the allegations contained in said
23 paragraph, and on that basis denies each and every allegation contained therein.

24 **C. PLAINTIFF'S TRADEMARK RIGHTS**

25 11. Answering Paragraph 11 of the Complaint, Defendant is without sufficient
26 knowledge or information to form a belief as to the truth of the allegations contained in said
27 paragraph, and on that basis denies each and every allegation contained therein.

1 12. Answering Paragraph 12 of the Complaint, Defendant is without sufficient
2 knowledge or information to form a belief as to the truth of the allegations contained in said
3 paragraph, and on that basis denies each and every allegation contained therein.

4 13. Answering Paragraph 13 of the Complaint, Defendant is without sufficient
5 knowledge or information to form a belief as to the truth of the allegations contained in said
6 paragraph, and on that basis denies each and every allegation contained therein.

7 14. Answering Paragraph 14 of the Complaint, Defendant is without sufficient
8 knowledge or information to form a belief as to the truth of the allegations contained in said
9 paragraph, and on that basis denies each and every allegation contained therein.

10 15. Answering Paragraph 15 of the Complaint, Defendant is without sufficient
11 knowledge or information to form a belief as to the truth of the allegations contained in said
12 paragraph, and on that basis denies each and every allegation contained therein.

13 16. Answering Paragraph 16 of the Complaint, Defendant is without sufficient
14 knowledge or information to form a belief as to the truth of the allegations contained in said
15 paragraph, and on that basis denies each and every allegation contained therein.

16 17. Answering Paragraph 17 of the Complaint, Defendant is without sufficient
17 knowledge or information to form a belief as to the truth of the allegations contained in said
18 paragraph, and on that basis denies each and every allegation contained therein.

19 18. Answering Paragraph 18 of the Complaint, Defendant is without sufficient
20 knowledge or information to form a belief as to the truth of the allegations contained in said
21 paragraph, and on that basis denies each and every allegation contained therein.

22 **D. TODD ESREY'S UNAUTHORIZED USE OF THE WHITE CAP TRADEMARK**

23 19. Answering Paragraph 19 of the Complaint, Defendant is without sufficient
24 knowledge or information to form a belief as to the truth of the allegations contained in said
25 paragraph, and on that basis denies each and every allegation contained therein.

26 20. Answering Paragraph 20 of the Complaint, Defendant is without sufficient
27 knowledge or information to form a belief as to the truth of the allegations contained in said
28 paragraph, and on that basis denies each and every allegation contained therein.

1 21. Answering Paragraph 21 of the Complaint, Defendant is without sufficient
2 knowledge or information to form a belief as to the truth of the allegations contained in said
3 paragraph, and on that basis denies each and every allegation contained therein.

4 22. Answering Paragraph 22 of the Complaint, Defendant is without sufficient
5 knowledge or information to form a belief as to the truth of the allegations contained in said
6 paragraph, and on that basis denies each and every allegation contained therein.

7 23. Answering Paragraph 23 of the Complaint, Defendant is without sufficient
8 knowledge or information to form a belief as to the truth of the allegations contained in said
9 paragraph, and on that basis denies each and every allegation contained therein.

10 24. Answering Paragraph 24 of the Complaint, Defendant is without sufficient
11 knowledge or information to form a belief as to the truth of the allegations contained in said
12 paragraph, and on that basis denies each and every allegation contained therein.

13 25. Answering Paragraph 25 of the Complaint, Defendant is without sufficient
14 knowledge or information to form a belief as to the truth of the allegations contained in said
15 paragraph, and on that basis denies each and every allegation contained therein.

16 26. Answering Paragraph 26 of the Complaint, Defendant is without sufficient
17 knowledge or information to form a belief as to the truth of the allegations contained in said
18 paragraph, and on that basis denies each and every allegation contained therein.

19 27. Answering Paragraph 27 of the Complaint, Defendant is without sufficient
20 knowledge or information to form a belief as to the truth of the allegations contained in said
21 paragraph, and on that basis denies each and every allegation contained therein.

22 28. Answering Paragraph 28 of the Complaint, Defendant is without sufficient
23 knowledge or information to form a belief as to the truth of the allegations contained in said
24 paragraph, and on that basis denies each and every allegation contained therein.

25 29. Answering Paragraph 29 of the Complaint, Defendant is without sufficient
26 knowledge or information to form a belief as to the truth of the allegations contained in said
27 paragraph, and on that basis denies each and every allegation contained therein.

1 30. Answering Paragraph 30 of the Complaint, Defendant is without sufficient
2 knowledge or information to form a belief as to the truth of the allegations contained in said
3 paragraph, and on that basis denies each and every allegation contained therein.

4 31. Answering Paragraph 31 of the Complaint, Defendant is without sufficient
5 knowledge or information to form a belief as to the truth of the allegations contained in said
6 paragraph, and on that basis denies each and every allegation contained therein.

7 32. Answering Paragraph 32 of the Complaint, Defendant is without sufficient
8 knowledge or information to form a belief as to the truth of the allegations contained in said
9 paragraph, and on that basis denies each and every allegation contained therein.

10 33. Answering Paragraph 33 of the Complaint, Defendant is without sufficient
11 knowledge or information to form a belief as to the truth of the allegations contained in said
12 paragraph, and on that basis denies each and every allegation contained therein.

13 34. Answering Paragraph 34 of the Complaint, Defendant is without sufficient
14 knowledge or information to form a belief as to the truth of the allegations contained in said
15 paragraph, and on that basis denies each and every allegation contained therein.

16 **PRAYER FOR RELIEF**

17 35. Answering Paragraph 35 of the Complaint, upon Court order (and after TierraNet,
18 Inc. becomes the registrar of the domain name at issue), Defendant will transfer the domain name
19 registration and ownership of the domain name whitecap.com to plaintiff.

20 36. Defendant TierraNet, Inc. denies that Plaintiff is entitled to an award of costs of suit
21 against it.

22 37. Defendant TierraNet, Inc. denies that Plaintiff is entitled to any further relief against
23 it.

24 HOLSENBACK TAYLOR

25
26
27 Dated: November 26, 2007

By:



J. Daniel Holsenback, Esq.
Attorney for TierraNet, Inc.

1 **AFFIRMATIVE DEFENSES**

2 Defendant TierraNet, Inc. states the following affirmative defenses to the Complaint:

3 **FIRST AFFIRMATIVE DEFENSE**

4 Loss or damage to Complainant, if any, was occasioned by its own failure to act in a
5 reasonably prudent manner under the circumstances.

6 **SECOND AFFIRMATIVE DEFENSE**

7 This answering Defendant did not cause complainant's damages, if any.

8 **THIRD AFFIRMATIVE DEFENSE**

9 Complainant failed to exhaust its administrative remedies before bringing this action.

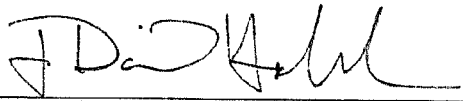
10 **PRAYER**

11 **WHEREFORE**, Defendant requests that the Complaint be dismissed in all respects and that
12 Defendant be awarded costs and expenses associated with the defense of said Complaint, including
13 costs and attorneys' fees, and whatever further relief this Court deems just and proper.

14
15 HOLSENBACK TAYLOR

16
17 Dated: November 26, 2007

By:

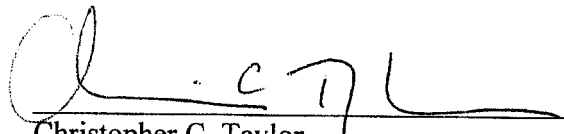
18 
19 J. Daniel Holsenback, Esq.
20 Attorney for TierraNet, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer was this date served upon all counsel of record, by placing a copy of the same in the United States Mail, postage prepaid, and sent to their last known address as follows:

Michael D. Harris
Steven C. Sereboff
M. Kala Sarvaiya
SoCal IP Law Group, LLP
310 N. Westlake Boulevard, Suite 120
Westlake Village, CA 931362

Signed under the penalty of perjury pursuant to the laws of the United States and the State of California this 27 day of November 2007, at San Diego, California.

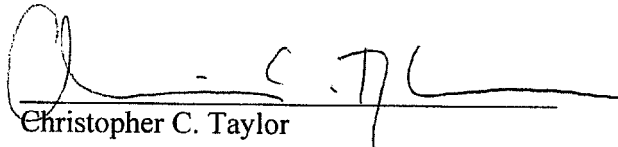

Christopher C. Taylor

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer was this date served upon all counsel of record, by placing a copy of the same in the United States Mail, postage prepaid, and sent to their last known address as follows:

Michael D. Harris
Steven C. Sereboff
M. Kala Sarvaiya
SoCal IP Law Group, LLP
310 N. Westlake Boulevard, Suite 120
Westlake Village, CA 91362

Signed under the penalty of perjury pursuant to the laws of the United States and the State of California this 21 day of November 2007, at San Diego, California.


Christopher C. Taylor